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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 VERONICA MCMILLIN,

10 Plaintiff,

11 vs.

12 CAROLYN W. COLVIN,
13 Acting Commissioner of
Social Security,

14 Defendant.

) 3:13-cv-00411-LRH-WGC

ORDER

15 Before the court is Plaintiff's application to proceed in forma pauperis (Doc. # 1),¹ and
16 complaint (Doc. # 1-1).

17 **I. APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

18 A person may be granted permission to proceed in forma pauperis if the person
19 "submits an affidavit that includes a statement of all assets such [person] possesses [and] that
20 the person is unable to pay such fees or give security therefor. Such affidavit shall state the
21 nature of the action, defense or appeal and affiant's belief that the person is entitled to
22 redress." 28 U.S.C. § 1915(a)(1). "[T]he supporting affidavits [must] state the facts as to the
23 affiant's poverty with some particularity, definiteness, and certainty." *United States v.*
24 *McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (per curiam) (citing *Jefferson v. United States*,
25 277 F.2d 723, 725 (9th Cir. 1960)). The litigant need not "be absolutely destitute to enjoy the
26 benefits of the statute." *Adkins v. E.I. du Pont De Nemours & Co.*, 335 U.S. 331, 339 (1948).

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¹Refers to court's docket number.

1 A review of Plaintiff's financial affidavit reveals that she is unable to pay the filing fee.
2 She states that she is dependent on her husband's income in the amount of \$1550 per month,
3 but their monthly expenses are approach that amount, and in addition, her husband supports
4 her seventeen-year-old son. As a result, Plaintiff's application to proceed in forma pauperis
5 (Doc. # 1) is **GRANTED**. However, the court notes that Plaintiff is represented by an attorney,
6 and therefore conditions the grant of the application to proceed in forma pauperis as follows:
7 if recovery is had by Plaintiff in this action, then the filing fee shall be paid. At this time,
8 Plaintiff is not required to pre-pay the full filing fee.

9 **II. SCREENING**

10 **A. Standard**

11 Applications to proceed in forma pauperis are governed by 28 U.S.C. § 1915, which
12 "authorizes the court to dismiss an IFP action that is frivolous or malicious." *Franklin v.*
13 *Murphy*, 745 F.2d 1221, 1226 (9th Cir. 1984) (citing 28 U.S.C. § 1915(a) (citing 28 U.S.C. §
14 1915(d)). This provision applies to all actions filed in forma pauperis, whether or not the
15 plaintiff is incarcerated. *See Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc);
16 *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

17 28 U.S.C. § 1915 provides: "the court shall dismiss the case at any time if the court
18 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
19 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
20 immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Dismissal of a complaint for
21 failure to state a claim upon which relief may be granted is provided for in Federal Rule of
22 Civil Procedure 12(b)(6), and this court applies the same standard under Section 1915(e)(2)
23 when reviewing the adequacy of a complaint or amended complaint. *See Resnick v. Hayes*,
24 213 F.3d 443, 447 (9th Cir. 2000) (citation omitted). Review under Rule 12(b)(6) is essentially
25 a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th
26 Cir. 2000).

1 In reviewing a complaint under this standard, the court must accept as true the
 2 allegations of the complaint in question, *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S.
 3 738, 740 (1976), construe the pleading in the light most favorable to plaintiff, and resolve all
 4 doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Allegations in
 5 pro se complaints are held to less stringent standards than formal pleadings drafted by
 6 lawyers, and must be liberally construed. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v.*
 7 *Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*); *see also Hamilton v. Brown*, 630 F.3d 889,
 8 893 (9th Cir. 2011); *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *Balistreri v. Pacifica*
 9 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

10 A complaint must contain more than a "formulaic recitation of the elements of a cause
 11 of action;" it must contain factual allegations sufficient to "raise a right to relief above the
 12 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
 13 must contain something more . . . than . . . a statement of facts that merely creates a suspicion
 14 [of] a legally cognizable right of action." *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice*
 15 and *Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state
 16 "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see also*
 17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 A dismissal should not be without leave to amend unless it is clear from the face of the
 19 complaint that the action is frivolous and could not be amended to state a federal claim, or the
 20 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70
 21 F.3d 1103, 1106 (9th Cir. 1995) (dismissed as frivolous); *O'Loughlin v. Doe*, 920 F.2d 614, 616
 22 (9th Cir. 1990).

23 **B. Plaintiff's Complaint**

24 Plaintiff's Complaint names Carolyn W. Colvin, Acting Commissioner of Social Security.
 25 Plaintiff has filed his Complaint requesting review of the final decision of the Commissioner
 26 of Social Security. (Doc. # 1-1.)

1 Federal courts have sole jurisdiction to conduct judicial review of the Social Security
2 Administration's determination in this regard. *See* 42 U.S.C. § 405(g). Upon a review of
3 Plaintiff's Complaint, it appears that she has exhausted her administrative remedies with the
4 Social Security Administration. Therefore, the court will allow Plaintiff's Complaint to
5 **PROCEED.**

III. CONCLUSION

(1) Plaintiff's application to proceed in forma pauperis (Doc. # 1) is GRANTED. The movant herein is permitted to maintain this action without the necessity of prepayment of fees or costs or the giving of security therefor. However, should the action result in a recovery to Plaintiff, the court will require the payment of the full filing fee. This order granting in forma pauperis status does not extend to the issuance of subpoenas at government expense.

12 (2) The complaint will **PROCEED** and the Clerk is instructed to **FILE** the Complaint
13 (Doc. # 1-1).

19 (4) The Clerk shall **ISSUE** a summons to the Social Security Administration and deliver
20 the summons and complaint to the U.S. Marshal for service on the U.S. Attorney's Office at
21 100 West Liberty Street, Suite 600, Reno, Nevada 89501.

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1 (5) Henceforth, Plaintiff, or her counsel, shall serve upon defendant, or defendant's
2 attorney, a copy of every pleading, motion, or other document submitted for consideration by
3 the court. Plaintiff shall include with the original paper submitted for filing a certificate
4 stating the date that a true and correct copy of the document was mailed to defendant or
5 defendant's counsel. The court may disregard any paper received by a district judge,
6 magistrate judge, or clerk which fails to include a certificate of service.

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8 **IT IS SO ORDERED.**

9 DATED: August 15, 2013.

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William G. Cobb

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WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE

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